

IRS Provides Relief to Tax Residency Rules for Snowbirds and US Expats Due to COVID-19 Travel Disruptions

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On April 21, 2020, the IRS released [Notice 2020-20](#), announcing they will provide a 60-day grace period to “Eligible Individuals” who are impacted by involuntarily extensions of their stay in the United States due to COVID-19. The relief provided by Notice 2020-20 will allow these individuals to exclude up to 60 days of physical presence in the United States from the “Substantial Presence Test” for 2020.

As we previously discussed in our [April 7, 2020 blog](#), Section 7701(b) of the Internal Revenue Code may require Canadian snowbirds stuck in the United States due to the COVID-19 pandemic to file 2020 US tax returns. Under the substantial presence test rules, if a Canadian snowbird meets a residence threshold of 183 days, they may inadvertently become residents of the United States for Federal income tax and reporting purposes and subject to the same Federal tax reporting obligations as US citizens and lawful permanent residents. The 183 days are counted either in a single year or by calculating time spent in the US over the past three years.

An eligible individual is a non-citizen, non-resident of the United States (i.e., Canadian snowbird), who is experiencing severely restricted movements and is unable to depart the United States at this time due to factors beyond their control. This includes individuals affected by cancelled flights, orders of government authorities, and even general feelings that it is unsafe to travel due to physical distancing recommendations. Canadians who are impacted by an extended stay in the United States can make a claim for relief by filing IRS Form 8843 and claiming a Medical Condition Exception to exclude up to 60 days of physical presence from the Substantial Presence Test starting anytime between February 1 and April 1, 2020.

Additionally, the IRS also released [Notice 2020-27](#), which provides relief for US citizens or residents whose tax home is in a foreign country. Specifically, Notice 2020-27 expands the eligibility requirements under Section 911 of the Internal Revenue Code, which allows qualified individuals to elect to exclude income based on their foreign earned income and foreign housing costs. Qualified individuals are US citizens or residents who had established a tax home or are bonafide residents of a foreign country for a certain period of time during the taxable year. Qualification generally requires an individual to have spent at least 330 full days in a foreign country during the calendar year or otherwise taken steps to establish a bona fide foreign residence.

The IRS has previously provided exceptions allowing individuals to continue to be treated as qualified individuals in establishing their specific foreign tax home if the individual left their tax home country during the year because of war, civil unrest, or similar conditions that preclude the “normal conduct of business.” Under Notice 2020-20, the COVID-19 pandemic qualifies as an adverse condition that precludes the normal conduct of business. Therefore, qualified individuals will remain eligible to claim these benefits as foreign residents, even if they were unable to return to their foreign tax home between February 1, 2020, and July 15, 2020.

This guidance from the IRS should provide additional relief for Canadian snowbirds and US citizens

living in Canada that have been impacted by COVID-19. As always, our firm stands ready to assist and strategize in order to ensure compliance with your cross-border tax and immigration requirements.